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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/320,643	05/27/99	FIVA	M Q-54188

MMC2/0730
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2100 PENNSYLVANIA AVENUE NW
WASHINGTON DC 20037-3213

EXAMINER

LEE, D

ART UNIT	PAPER NUMBER
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2876

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DATE MAILED: 07/30/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
09/320,643

Applicant(s)
PIVA et al.

Examiner
Diane Lee

Art Unit
2876



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on May 10, 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 36-70 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claims 36-70 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☒ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☒ All b) ☐ Some* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- *See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- 15) ☐ Notice of References Cited (PTO-892) 18) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 19) ☐ Notice of Informal Patent Application (PTO-152)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 20) ☐ Other:

DETAILED ACTION

1. Receipt is acknowledged of the Amendment filed 10 May 2001. Claims 1-35 have been canceled and claims 36-70 have been newly added. Currently claims 36-70 are pending in this application.

Election/Restriction

2. Restriction to one of the following inventions is required under 35 U.S.C. 121:

Group I. Claim 36-37, 42-50, and 52-67, drawn to an apparatus for reading optical codes placed at variable distance, classified in class 235, subclass 462.42.

Group II. Claims 38-41, 51, and 68-70, drawn to an optical code reading apparatus, classified in class 235, subclass 454.

3. The inventions are distinct, each from the other because of the following reasons: Inventions Group II and Group I are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because the combination does not require the first array of light source for illuminating an optical code placed within a first distance range and the second array of light source for illuminating an optical code placed within a second distance range that is different from the first distance range. The subcombination has separate utility such as it can be used in an optical code reader for reading an optical code at variable distance (i.e., a reader for reading an optical code placed at a plurality of difference distance from the reader.)

1 4. Because these inventions are distinct for the reasons given above and have acquired a separate status
2 in the art as shown by their different classification, restriction for examination purposes as indicated is
3 proper.

4 5. A telephone call was made to Mr. Sloan on 7/10/01 to request an oral election to the above
5 restriction requirement, but did not result in an election being made.

6 Applicant is advised that the reply to this requirement to be complete must include an election of the
7 invention to be examined even though the requirement be traversed (37 CFR 1.143).

8 6. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the
9 inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named
10 inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of
11 inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37
12 CFR 1.17(I).

13
14 **Conclusion**

15 7. Any inquiry concerning this communication or earlier communications from the examiner should be
16 directed to *Diane I. Lee* whose telephone number is (703) 306-3427. The examiner can normally be reached
17 between the hours of 7:00AM to 4:30PM Monday thru Thursday and every other Friday (first Friday of the
18 bi-week).

19 If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael
20 Lee, can be reached on (703) 305-3503. The fax phone number for this Group is (703) 308-7722.


21 Communications via Internet e-mail regarding this application, other than those under 35 U.S.C. 132
22 or which otherwise require a signature, may be used by the applicant and should be addressed to
23 [michael.lee@uspto.gov].

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Applicant(s): PIVA et al. (235/454) Page 4
Representative: Robert Sloan (Reg. No. 22,775)

1 All Internet e-mail communications will be made of record in the application file. PTO employees
2 do not engage in Internet communications where there exists a possibility that sensitive information could be
3 identified or exchanged unless the record includes a properly signed express waiver of the confidentiality
4 requirements of 35 U.S.C. 122. This is more clearly set forth in the Interim Internet Usage Policy published
5 in the Official Gazette of the Patent and Trademark on February 25, 1997 at 1195 OG 89.

6 Any inquiry of a general nature or relating to the status of this application or proceeding should be
7 directed to the Group receptionist whose telephone number is (703) 308-0956.

8
9 
10 **Diane I. Lee**
11 **Art Unit 2876**
12 **July 19, 2001**